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MARITIME SECURITY AND THE FIGHT AGAINST DRUG TRAFFICKING IN THE MEDITERRANEAN AND ATLANTIC APPROACHES

Vincenzo Delicato

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STRENGTHENING TRANSATLANTIC COOPERATION



Istituto Affari Internazionali

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The German Marshall Fund of the United States
1744 R Street, NW
Washington, DC 20009
T 1 202 683 2650
F 1 202 265 1662
E info@gmfus.org

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Cover photo: Bricks of confiscated marijuana. Photo credit: Joe Raedle/Getty Images

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Vincenzo Delicato¹

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¹ Vincenzo Delicato is a Senior Officer in the Italian National Police. This paper only reflects the author's personal opinions.

EXECUTIVE SUMMARY

The Mediterranean Sea is particularly affected by illicit trafficking in drugs. Italy's Public Security Department of the Ministry of the Interior is responsible for all initiatives aimed at preventing and combating illicit drug trafficking in Italy and is also entrusted with planning and coordinating sea activities. In the last few years, a set of international rules has been drawn up to facilitate intervention at sea and standardize control procedures. In the field of drug trafficking, ad hoc European regulations have been developed and two centers for analysis and coordination in operations against drug trafficking at sea set up. However, Italy — while participating in the most recent operational cooperation initiatives — has not yet ratified the Council of Europe agreement implementing article 17 of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. It would be desirable to adopt more comprehensive legislative measures and establish intervention criteria for all law enforcement actors involved.

1

THE MAIN ROUTES OF DRUG TRAFFICKING

The production and trafficking of drugs remain amongst the primary activities of organized criminal groups in Europe, and the Mediterranean Sea is particularly affected by illicit trafficking in drugs.² It is a crucial crossroads for smuggling cocaine, heroin, hashish, and more recently, even ecstasy. Trafficking patterns are extremely diversified. Two-way use of the Balkan route, with an increased flow of drugs from Western Europe into Central and Southern Europe and Turkey, has been registered recently. There are also maritime flows of cocaine from South America via Western Africa, as well as of ecstasy produced in Europe bound for Australian markets. This paper intends to outline the scope of these phenomena, the legal framework, and the main practices used to counter them. It addresses the relationship between domestic measures and international commitments, mainly at the European level.

² See Europol's files on Drugs, March 2006; European Union *Cocaine Situation, Report 2007*, September 2007; *Amphetamine-Type Stimulants in the European Union 1998-2007*, July 2007: www.europol.europa.eu; see also Europol's threat assessment of organized crime. Detailed information on drug trafficking can be found in the reports issued by the International Narcotics Control Board and other publications found on the website of the UN office for the fight against drugs, www.unodc.org or www.incb.org. A recent pamphlet on illicit trafficking and the presence of foreign organized criminal groups in Italy, supported by statistical data and scientific references, was drawn up by Stefano Becucci, *Criminalità multietnica. I mercati illegali in Italia*, Rome, Bari, 2006.

The routes by which drugs reach Europe — and Italy — cross various countries. Yet, these paths change constantly on the basis of transnational connections and safety precautions. Traffickers use all means of transport available, even though the largest amounts of drugs are transferred by ships. The ports of Lisbon, Malaga, and Marseille, as well as Italy's Tyrrhenian and Sicilian ports are particularly involved.

Heroin originates in three main areas: Afghanistan and Pakistan; the Golden Triangle region of Burma, Laos, and China; and Central Asia. From there it can take various routes. One is the Balkan route that, before reaching destination countries in Western Europe, goes through Turkey and the Balkan states. Another runs through Russia and Ukraine to reach European countries. A third route is through the Eastern African countries, in particular Somalia, Ethiopia, and Kenya, to Nigeria, from where it is sent to North America and European Mediterranean states. A significant flow of heroin travels through the Arabian peninsula and the Red Sea to Europe. Heroin is also transported from the producing areas to the Pacific coast of the United States. Heroin produced in Colombia reaches the United States through Central America and Mexico.

As far as cocaine is concerned, trafficking starts mainly in Colombia, Venezuela, Bolivia, and Peru. The main routes for cocaine are 1) the Latin American route — from producing countries to

Argentina, Paraguay, United States, Canada, Europe — often through the Caribbean islands; 2) the North Pacific route — through Mexico to United States; 3) the Atlantic route — from Venezuela, Colombia, Brazil, Argentina toward Europe and the United States, via some African countries;³ and 4) the Isthmus route — to the United States via Central America and Mexico. The largest quantities of cocaine are brought into European countries by sea. Three main flows have been identified: 1) from the Caribbean via the Azores to Portugal and Spain; 2) from South America via Cape Verde or Madeira, and the Canary Islands to Europe; 3) from South America to Western Africa and from there to Spain and Portugal. In recent years an increase in trafficking through Spain has been registered.

As for hashish, Northwest Africa plays a key role in the trafficking destined for Europe, the largest consumer market for this substance. Yet, hashish also reaches Italy via the Balkan route (through Turkey) or via the Mediterranean, from Lebanon to Cyprus and Greece. For some years now, a remarkable trafficking of marijuana between Italy and Albania has been registered. The drug is transported from the Albanian ports of Durres and Vlore to the Apulian ports of Bari, Brindisi, and Otranto. Albanian criminal networks play a

³ The Atlantic waters off the Cape Verde archipelago and the African countries in the Gulf of Guinea are used to bypass the strict controls enacted by the international community in the Caribbean Sea.

strategic role in the production of cannabis and the storage of heroin and cocaine.

At present, the most significant threat is posed by trafficking in cocaine. As mentioned, trafficking along the African coast has increased in recent years, with seizures also increasing in the north-western area. According to data issued by the International Narcotics Control Board, a sharp increase has been noted since 2005. While the average quantity of drugs seized before that time did not reach a ton, in 2006 almost three tons of cocaine were seized, and six tons were seized the following year.⁴ This trend is supported by data concerning Italy, too. In 2008, anti-drug operations reported an increase with respect to the previous year, with seizures amounting to more than 42 tons of narcotic and psychotropic substances; more than four tons of which was cocaine.⁵ Most seizures were made in ports or sea areas for a total amount exceeding 3.5 tons of goods. The largest cocaine seizure, amounting to almost 500 kilograms in a single operation, was carried out at the port of Vado Ligure in August 2008.

⁴ The most important seizures were made in Benin, Cape Verde, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Nigeria, Sierra Leone, and Senegal; *Report 2008* (E/INCB/2008/1), paragraph 242-246 and 321-326, www.incb.org.

⁵ See *Report 2008* issued by the Central Directorate for Anti-drug Services of the Public Security Department, on the official police website, www.poliziadistato.it.

2 THE LEGAL FRAMEWORK

The Italian legal framework regarding drug trafficking was established by article 99 of Presidential Decree 309/1990 (and following amendments). Pursuant to this rule, any warship or vessel on police duty — whether in territorial waters or on the high seas — that comes across a vessel of its own nation, including a yacht or a fishing vessel, suspected of transporting narcotic drugs or psychotropic substances may stop and inspect it, search and seize its cargo, and take it to a port of its state or to the nearest foreign port in which its consular authority is based with a view to fulfilling the subsequent police duties.⁶ According to paragraph 2 of the same provision, identical powers can be exercised in relation to foreign vessels trafficking drugs in territorial or international waters, provided that stopping and searching is in compliance with international law.⁷

According to article 19 of the UN Convention on the Law of the Sea, drug trafficking is an activity that jeopardizes the “peace, good order, and security” of coastal states. This provision envisages the possibility of carrying out checks on foreign vessels

⁶ The relevant text can be found on the official website of the Ministry of Justice, www.giustizia.it.

⁷ As to the scope of domestic and international law regulating the fight against drug trafficking at sea, see Massimo Di Marco, “Il contrasto al traffico di droga via mare,” in *Notiziario Guardia Costiera*, 2008, p. 39 *et seq.*; Luca Salamone, “La lotta al traffico di stupefacenti via mare,” *ibidem*, 2005, p. 51 *et seq.*; and “Lotta al traffico di stupefacenti via mare alla luce della vigente normativa nazionale ed internazionale,” in *Diritto e Diritti*, www.diritto.it.

and exercising national jurisdiction in one’s territorial sea and, obviously, in internal waters. Since Italy has not established a contiguous zone, the action of ships on government duty is limited to illicit actions committed in internal and territorial waters.⁸ As far as the high seas are concerned, the Convention on the Law of the Sea does not provide specific legal tools regarding drugs; it only envisages a general obligation to cooperate to suppress illicit trafficking in narcotics and psychotropic substances perpetrated by vessels on the high seas (article 108). According to that provision, any state with well-grounded reasons for holding that a vessel flying its flag is involved in drug trafficking may request other states’ cooperation in order to suppress it. Apart from the cases included under article 110 of the Convention, which relate to ships with no nationality, the right to interfere with foreign ships is subject to the existence of an agreement among the states concerned or the consensus of the party concerned.⁹

⁸ As to the contiguous zone, a coastal state can carry out jurisdictional activity within its sphere of competence in order to prevent or suppress infringements of customs, fiscal, immigration, or health regulations (article 33 of the Montego Bay Convention). The area stretches up to 24 miles from the basic line and starts from the external boundary of territorial waters. The state is obliged to declare its existence. Italian law 189/2002, which authorizes the Navy and police forces to stop illegal trafficking of immigrants, makes reference to the contiguous zone, but does not *per se* create such a zone.

⁹ After a well-known case, in which an Italian police unit boarded a foreign ship transporting drugs on the open sea (the Honduras “Fidelio” cargo), the Italian Supreme Court stated

Various agreements on fighting drug trafficking are in force. As far as Italy is concerned, in addition to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened to signature in Vienna on December 20, 1988, (Vienna Convention), it signed a bilateral treaty with Spain on March 23, 1990.¹⁰ Both regulate the procedures by which respective national authorities express their consent and define the measures that parties can adopt at sea to fight illicit drug trafficking. Article 17 of the UN Convention reflects the general rule that obliges states to respect the nationality of ships: in international waters, a state can interfere with a foreign ship suspected of transporting drugs only with the consent of the flag state. The same provision regulates the procedures needed to exchange information among state parties, lists the actions that can be carried out (checks, seizure, etc.), and calls for mutual communication concerning the authority responsible for authorizing checks and allowing other states to take the necessary steps toward national ships. In addi-

tion to this, the Convention encourages the conclusion of agreements or Memorandums of Understanding among state parties in order to facilitate mutual consent for performing checks and other efforts aimed at suppressing drug trafficking.

that if there is no authorization from the flag state, no rules are in place to legitimate the exercise of national jurisdiction. Corte di Cassazione, I, Criminal Section, February 1, 1993, *Rivista diritto internazionale*, 1995, p. 465 *et seq.*

¹⁰ The UN convention has been in force in Italy since March 31, 1991 (law authorizing ratification and enforcement, No. 328 of November 5, 1990, *Gazzetta Ufficiale della Repubblica Italiana*, Suppl., No. 267 of November 15, 1990). The agreement with Spain has been in force since May 7, 1994 (law authorizing ratification and enforcement, No. 304 of July 24, 1993, *Gazzetta Ufficiale della Repubblica Italiana*, Suppl., No. 194 of July 29, 1993).

An agreement concluded within the Council of Europe on June 13, 1995, implementing article 17 of the Vienna Convention provides for a number of detailed provisions that can be enforced at the regional level.¹¹ It establishes procedures for sea intervention by warships or vessels on police duty of the states involved in the fight against drug trafficking. While they need the authorization of the flag state to carry out checks and undertake measures against a suspicious vessel, after the intervention has taken place, a specific principle of jurisdiction-sharing applies: the flag state has the power to exercise its jurisdiction, but should it renounce it, the intervening state exercises it. The agreement lays down that the state parties shall indicate the authority responsible for sending the intervention requests and for answering the requests of other parties. They shall also establish a central authority responsible for providing information on the exercise of jurisdiction. The agreement has not yet been ratified by Italy.

There are some gaps in Italian national legislation for implementing the 1990 agreement with Spain,

¹¹ The agreement entered into force internationally on May 13, 2000. For the relevant text, signatures, and ratifications, see the official Council of Europe website www.coe.int.

which has been in force for several years now. Although the agreement contains a set of self-executing provisions, the law implementing the agreement does not envisage further instruments to facilitate application at national level. The agreement ensures preventive mutual authorization for carrying out checks on suspicious vessels of the other party. The intervening state is empowered to stop, visit, search the vessel, and arrest the people involved. The vessel can also be rerouted to a nearby port. However, the agreement lays down jurisdiction rules that are not immediately or automatically enforceable. Article 4 acknowledges the flag country's "preferential" entitlement to jurisdiction, but recognizes the possibility of renouncing upon request by the country that carried out the checks, thus conferring the exercise of criminal action upon the latter. In case the flag state decides to exercise jurisdiction, the other state should transfer to it all documents and collected evidence, the corpus delicti, the persons under restriction measures, and any other element relating to the proceedings (article 6).

3 DOMESTIC LEGISLATION AND HUMAN RIGHTS PROTECTION

For the moment, there are no domestic provisions in Italy regulating procedures for coordinating or sharing competences in the fight against drug trafficking at sea (Navy, port authorities, police forces). Furthermore, no standard procedures have been set out for authorizing checks, carrying out operations, and exercising jurisdiction, etc. in international waters in the specific cases envisaged by the noted above. Intervention options are currently based on the regulations of each force entitled to carry out policing activities at sea and on the status of the vessels used (warship or vessel on police duty).

In this regard, article 10 of Presidential Decree 309/1990 entrusts the Department of Public Security of the Ministry of the Interior, and specifically its Central Directorate of Anti-Drugs Services, with a general responsibility for international police cooperation in the fight against the trafficking of drugs and psychotropic substances.¹² As a result, the Central Directorate is the body that coordinates and plans the activities to be carried out at sea, both at the domestic and the international level.¹³ However,

¹² “...As to the tasks of the Ministry of the Interior for the coordination and planning of police forces and management of police services to prevent and suppress trafficking in drugs and psychotropic substances the Head of the National Police — Director General of Public Security — avails himself of the Central Anti-Drugs Service.... said service keeps and develops relations with the relevant foreign police services.... in addition, the Service maintains relations with the international bodies involved in the anti-drugs police cooperation.”

¹³ This is the framework for the numerous bi/multilateral police agreements in force in Italy, the network of liaison

it would be advisable to pass legislation regulating the matter more comprehensively and detailing the procedures to be adopted by all actors involved. In the absence of such legislation, operations implemented by the bodies responsible for checks could prove incomplete or inconsistent, and the initiatives undertaken by the national authorities responsible for cooperation with foreign countries and the relevant international organizations may not be fully effective.¹⁴

Indeed, the issues relating to jurisdiction and intervention techniques play a crucial role not only in relation to the cases envisaged by the above mentioned conventions (e.g., possible abuses or damage caused during operations or initial suspicions which proved ungrounded), but also in relation to the human rights obligations that fall upon the bodies acting under other provisions of international law.¹⁵ Obviously, the full implications

officers and national experts abroad, and the participation of the Public Security Department in all international forums dealing with security (European Union, United Nations, etc.). On these aspects, with specific reference to police cooperation in the field of illegal migration, see Vincenzo Delicato, “Il contrasto al traffico di migranti negli accordi bilaterali,” in Palmisano (ed.), *Il contrasto al traffico di migranti nel diritto internazionale, comunitario e interno*, Milano, 2008, p. 167 *et seq.*

¹⁴ For the reasons stated in the text, the Ministry of Justice also plays a fundamental role in the exercise of jurisdiction in addition to the Ministry of the Interior.

¹⁵ On this issue, see Vincenzo Delicato *The Fight against the Smuggling of Migrants in the Mediterranean: The Italian*

of this cannot be evaluated here. However, it should be pointed out that the European Court of Human Rights has handed down a ruling on anti-drug operations on the high seas, confirming its jurisdiction in these areas also on the basis of the Convention for the Protection of Human Rights and Fundamental Freedoms and its additional protocols.¹⁶

The cases concerned the terms and conditions of detention of alleged traffickers detected on board (provided for in article 5 of the Convention).¹⁷ It is clear that exercise of jurisdiction by a state party or the possible handing over to other authorities (either of member state or third states) of coercive powers toward persons or goods, has to be carried out in the framework of the guarantees envisaged by the Convention and its protocols. The state party is also obliged to apply the Convention's provisions

Experience, p. 14 *et seq.*, Mediterranean Paper Series 2010, GMF–IAI, August 2010. Illegal migration issues, in comparison to issues related to the fight against illicit drug trafficking, have a broader and more general character since they refer not only to the crime itself, but also to the conditions of the persons transported and their legal status.

¹⁶ The relevant texts, the status of signature, and ratification, as well as the rulings of the European Court, can be found on the Council of Europe website www.coe.int.

¹⁷ See the European Court rulings in the cases “*Rigapoulos vs Spain*” of January 12, 1999, and “*Medvedyev and others vs France*” of July 10, 2008. On these cases, see Seline Trevisanut, *Lotta al traffico di sostanze stupefacenti e tutela dei diritti umani in mare: il caso Medvedyev dinanzi alla Corte Europea dei Diritti Umani*, www.sidi-isil.it.

on the high seas if it exercises its jurisdiction, carries out the relevant checks, and adopts the measures necessary to combat illicit drug trafficking. On the other hand, if the state party authorizes foreign bodies to perform these functions, it has to evaluate the possible implications of this choice with regard to fundamental rights, in particular those related to the prohibition of the death penalty, torture, and inhuman or degrading treatment or penalties.¹⁸

¹⁸ The judgments of the European Court on Human Rights tend to highlight a limited number of rights considered of paramount importance and applicable also in the territories of third countries. Undoubtedly, among the fundamental rights provided for in the convention, mention should be made of the clauses that — on the basis of article 15 — are not subject to derogation or possible suspension even in case of armed conflict or serious public order crises. Paragraphs 1 and 2 of article 15 are as follows: “1. In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situations, provided that such measures are not inconsistent with its other obligations under international law. 2. No derogation from article 2, except in respect of deaths resulting from lawful acts of war, or from articles 3, 4 (paragraph 1), and 7 shall be made under this provision.” On these issues, see the evaluations and references in Vincenzo Delicato, *The Fight against the Smuggling of Migrants in the Mediterranean: the Italian Experience*, *op. cit.*, p. 14 *et seq.*

4 RECENT DEVELOPMENTS IN ANTI-DRUG MARITIME COOPERATION

Various instruments have been adopted in the European Union to promote strengthened cooperation among member states in combating illicit drug trafficking. The June 9, 1997, Joint Action (97/372 JHA) fosters the development of customs cooperation and the October 25, 2004, framework decision (2004/757 JHA) establishes national standardization criteria and lays the foundations for enhanced judicial and police cooperation at the European level.¹⁹ On September 30, 2007, an agreement was concluded among seven EU member countries, including Italy, to set up a centre for analysis and coordination in operations against drug trafficking at sea, the Maritime Analysis and Operations Centre –Narcotics (MAOC-N), located in Lisbon.²⁰ This centre aims to coordinate the operations carried out at sea by the authorities of the states concerned, as well as collecting, exchanging, and analyzing drug-related information. It covers an area extending from the eastern part of the Atlantic Ocean to European and Western African coastal areas. In addition, European Commission representatives participate as observers or liaison officers in the centre, as well as experts from the corresponding U.S. agency (Joint Interagency Task Force-South –JIATF-S) and Europol officers. Another coordination structure, the Centre de coordination pour la lutte anti-

drogue en Méditerranée (CeCLAD-M) was set up by France with an ad hoc act on December 31, 2008, and is located in Toulon.²¹ The centre performs the same functions as the Lisbon centre, but its operative focus is on the Mediterranean Sea. The CIMO (Conference of the Ministers of the Interior of Western Mediterranean Countries) countries (France, Algeria, Italy, Libya, Malta, Mauritania, Morocco, Portugal, Spain, and Tunisia) have been invited to appoint representatives.

¹⁹ The texts can be found in the *EU Official Journal*, No. 159 of June 17, 1997 and No. 335 of November 11, 2004, respectively.

²⁰ The other countries are France, Ireland, Netherlands, Portugal, Spain, and the United Kingdom.

²¹ The original project was launched during the meeting of the Ministers of the Interior at the Conference of the Ministers of the Interior of Western Mediterranean Countries (CIMO) on May 22, 2008. A further meeting was held under the French EU Presidency in 2008.

5 CONCLUSIONS AND POLICY RECOMMENDATIONS

Illicit drug trafficking in the Mediterranean Sea and in the Atlantic are subject to different legal systems. Navigation law and criminal jurisdiction cover the most relevant aspects of drug-related issues. A coastal state may act within its sea areas by exercising jurisdiction in case of suspected drug trafficking. For drug issues in international waters, the general rules legitimating checks of the vessel of a state or without nationality apply. However, intervention on the high seas has to take international agreements into account or have the consent of the flag state of the ship concerned.

Effective prevention and countering of illicit drug trafficking can only be achieved through international cooperation. In this context, the initiatives undertaken by the international community to improve the communication mechanisms among national authorities responsible for checks and the exercise of jurisdiction should be supported and developed. The most recent operational cooperation and analyses, as promoted by the EU's anti-drug coordination centers, represent very useful tools for states as well as means to rationalize interventions. This form of cooperation should be strengthened also with the participation of the relevant U.S. agencies in view of adding the fundamental transatlantic dimension to the fight against drug trafficking in the Mediterranean.

However, preventing and countering illicit trafficking has to be conducted in conformity with the obligation to protect human rights. The European

Convention for the Protection of Human Rights and Fundamental Freedoms also applies on the high seas. During operations, the commitment to save human life shall prevail over any other initiative. Similarly, the capture of traffickers shall be conducted on the basis of international standards of human rights protection.

In the last few years, a set of international rules has been drawn up to facilitate intervention at sea and standardize control procedures. In the field of drug trafficking, ad hoc European regulations have been developed. However, Italy — while participating in the most recent operational cooperation initiatives — has not yet ratified the Council of Europe agreement implementing article 17 of the 1988 UN Convention. The Public Security Department of the Ministry of the Interior is responsible for all initiatives aimed at preventing and combating illicit drug trafficking and is also entrusted with planning and coordinating sea activities. It is desirable to adopt more comprehensive legislative measures and establish intervention criteria for all actors involved.

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